

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

Jorge L. Margarrez, #75266-198,

Plaintiff,

vs.

C.A. No. 0:10-2467-HMH-PJG

**OPINION & ORDER**

Edgefield Federal Prison;

Mrs. Mary Mitchell, Warden;

Mr. Acosta, Assist. Warden;

Mr. Collie, Captain;

Mr. Santiago, S.I.S.;

Mr. Clark, Lt.;

Mr. Holet, Lt.;

Mr. Neal, C 1 Unit Manager;

Mr. H. Koger, III, B Unit Manager;

Mrs. S. Cheek, B Case Manager;

Mr. J. Bryant, B Counselor;

Mr. Johnson, C Counselor;

Mr. Roper, Unit Officer;

Mr. Upson, Unit Officer;

Mr. Flores, Unit Offficer;

Mr. Kate, Unit Officer;

Mrs. Martin, Unit Officer;

Mr. Green, Unit Officer;

Mr. Evans, Unit Officer;

Mrs. Jackson, Unit Officer;

Mr. Fallen, Assist. Warden;

Mr. S. Smith, Recreation;

Mr. T. Nixon;

Mr. J. Sullivan;

Mr. Sparks;

Mrs. Lathrop;

Mr. L. Morgan, Unit Officer;

Mr. B. Burkett, Unit Officer;

Mr. Wilson, Unit Officer;

Mr. Burkett, Unit Officer;

Mrs. V. Kepner,

Defendants.

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.<sup>1</sup> Jorge L. Margarrez (“Margarrez”), a federal prisoner proceeding pro se, filed this action pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), claiming deprivations of his Fifth, Eighth, and Fourteenth Amendment rights. Defendants moved to dismiss Alcala’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Magistrate Judge Gossett recommends granting Defendants’ motion. Margarrez timely filed objections to the magistrate judge’s Report on June 25, 2011.<sup>2</sup>

Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Margarrez’s objections are non-specific, unrelated to the dispositive portions of the magistrate judge’s Report and Recommendation, or merely restate

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<sup>1</sup> The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

<sup>2</sup> See Houston v. Lack, 487 U.S. 266 (1988).

his claims. In his objections, Margarrez concedes that dismissal is appropriate because he has failed to state a claim for which relief can be granted, and he requests an opportunity to cure his deficient pleading. (Objections 8-9.) Based on the foregoing, the court dismisses his complaint without prejudice to allow him the opportunity to file a new complaint.

It is therefore

**ORDERED** that Defendants' motion to dismiss, docket number 34, is granted, and Margarrez's complaint is dismissed without prejudice. It is further

**ORDERED** that Defendants' motion to stay, docket number 54, is denied as moot.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
July 13, 2011

#### **NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.